

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

JESSIE BENTON,
ANTHONY GUDE,
DARIA LYMAN, AND
CYBELE BENTON MCCORMICK

Plaintiffs,

v.

UMB BANK, N.A.,

Defendant.

Case No. _____

DEFENDANT UMB BANK, N.A.'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441, 1446 and 1454, defendant UMB Bank, N.A. (“UMB”) hereby gives notice of removal of this action, captioned *Jessie Benton, et al., v. UMB Bank, N.A.*, Case No. 19P8-PR01534, from the Circuit Court of Jackson County, Missouri, Probate Division (“State Court Action”), to the United States District Court for the Western District of Missouri. This Court has exclusive jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 because the claims and defenses at issue involve federal questions under the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

I. BACKGROUND

1. On December 17, 2019, Plaintiff filed a Petition in the Circuit Court of Jackson County, Missouri, Probate Division, alleging six causes of action all relating to UMB’s administration of the testamentary trusts of Thomas Hart Benton and Rita Benton (hereinafter collective referred to as the “Trust”).

2. Plaintiffs are heirs of Thomas Hart Benton and Rita Benton and beneficiaries of the Trust. Jessie Benton is the daughter of Thomas Hart Benton and Rita Benton and she resides in

Chilmark, Massachusetts. Anthony Gude is the grandson and he resides in Frankfort, Kansas. Daria Lyman is a granddaughter and she resides in Cambridge, Massachusetts. Cybele Benton McCormick is a granddaughter and she resides in Vineyard Haven, Massachusetts. Ms. Benton, Mr. Gude, Ms. Lyman, and Ms. McCormick are collectively referenced as “Plaintiffs”.

3. UMB was the co-Trustee of the Benton Trust. UMB’s corporate headquarters and principal place of business is located at 1010 Grand Boulevard, Kansas City, Missouri.

4. On June 2, 2021, Plaintiffs served UMB with the expert report of John A. Pelosi in the State Court Action.

5. Mr. Pelosi’s report offers opinions based exclusively, and in reliance on, the United States Copyright Act, including with respect to ownership, licensing, renewal and enforcement of copyrights related to assets held in the Trust. Mr. Pelosi’s opinions are based upon copyright ownership, registration, renewal, licensing, and enforcement rights governed by federal law.

6. On June 14, 2021, Plaintiffs served UMB with the expert report of Weston Anson in the State Court Action.

7. Mr. Anson’s report offers opinions of significant alleged damages associated the licensing of copyrights related to assets held in the Trust. Mr. Anson’s opinions are based upon copyright ownership, registration, renewal, licensing, and enforcement rights governed by federal law.

8. The Pelosi and Anson reports reflect that Plaintiffs are now asserting claims for relief relating to copyrights arising under or governed by the United States Copyright Act and other applicable federal law.

II. VENUE AND JURISDICTION

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 105, 1391, 1441(a), 1446(a),

and 1454 because the Circuit Court of Jackson County, Missouri, where this action was filed, is a state court within the Western District of Missouri and UMB resides in this judicial district.

10. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338 because this civil action arises under the laws of the United States, and in particular, the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

III. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED

A. The Notice of Removal is Timely

11. Pursuant to 28 U.S.C. § 1446(b)(3), “a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”¹ As explained above, within thirty days prior to this Notice of Removal, UMB was served with “other papers,” specifically expert reports, first indicating that liability and damages in this case would require resolution of underlying questions governed by the United States Copyright Act.

12. Further, pursuant to 28 U.S.C. § 1454(b)(2), “the time limitation contained in section 1446(b) may be extended at any time for cause shown.”² Even if this Notice of Removal is considered as filed beyond the 30-day time limitations in section 1446(b), sufficient cause exists for that time limitation to be extended. As explained above, Plaintiffs served substantial expert reports within the past thirty days which rely exclusively on federal copyright law. The questions underlying the expert opinions recently disclosed to UMB for the first time involve ownership, registration, renewal, licensing, and enforcement of copyrights in thousands of works governed by

¹ *Id.*

² *Id.*

the United States Copyright Act.

B. All Interested Parties Will Receive Notice of Removal

13. Pursuant to 28 U.S.C. § 1446(d), UMB will give written notice of this Notice of Removal to all parties of record in this matter, and will file a copy of this Notice of Removal with the clerk of the Circuit Court of Jackson County, Missouri, Probate Division.

IV. CONCLUSION

UMB hereby removes this action from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri.

Dated: June 19, 2021

Respectfully submitted by,

/s/ Todd W. Ruskamp

Todd W. Ruskamp, Mo Bar No. 38625

Email: truskamp@shb.com

B. Trent Webb, Mo Bar No. 40778

Email: bwebb@shb.com

Ryan J. Schletzbaum, Mo Bar No. 62631

Email: rschletzbaum@shb.com

Samuel J. LaRoque, Mo Bar No. 71052

Email: slaroque@shb.com

Patrick L. Kenney, Mo Bar No. 50205

Email: pkenney@shb.com

Russell J. Shankland, Mo Bar No. 63238

Email: rshankland@shb.com

SHOOK, HARDY & BACON L.L.P.

2555 Grand Blvd.

Kansas City, Missouri 64108

Telephone: 816.474.6550

Facsimile: 816.421.5547

Attorneys for Defendant UMB Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2021 a true and correct copy for the above and foregoing was served by e-mail to the following counsel of record:

Robert L. Langdon, Mo Bar No. 23233

bob@lelaw.com

J. Kent Emison, Mo Bar No. 29721

kent@lelaw.com

Michael W. Manners, Mo Bar No. 25394

mike@lelaw.com

John W. Tyner, Mo Bar No. 58864

john@lelaw.com

O. Nicole Smith, Mo Bar No. 68406

nicole@lelaw.com

LANGDON & EMISON, LLC

911 Main Street

P.O. Box 220

Lexington, MO 64067

Telephone: 660-259-6175

Facsimile: 660-259-4571

Andre Boyda, Mo Bar No. 64638

boydalaw@gmail.com

BOYDA LAW, LLC

1828 Swift Avenue, Suite 302

North Kansas City, MO 64116

Telephone: 816-419-8333

Facsimile: 816-527-8589

Larry D. Harman, Mo Bar No. 27120

lhorman@withersbryan.com

WHITHERS, BRYANT, IGOE & MULLENIX, P.C.

2 South Main Street

Liberty, MO 64068

Telephone: 816-781-4788

Facsimile: 816-792-2807

Attorneys for Plaintiffs

/s/ Todd W. Ruskamp

Todd W. Ruskamp

